

Summary of Law Affecting Student Uniforms in Utah Public Schools

Utah Law: Utah Code Section 53A-15-602 (included) provides procedures for adoption of a school uniform policy and requirements of that policy. Note that at least one public hearing is required prior to the adoption of the policy. The final provision of the section requires a school uniform policy to

“ . . . include a provision allowing a principal at any time during the school year to grant an exemption from wearing a uniform to a student because of extenuating circumstances.” The spirit of this provision includes the intent by the principal to actually and objectively review extenuating circumstances presented to him on a case-by-case basis and determine if they warrant exemption.

Constitutional Issues: What students are allowed to wear to school may raise Constitutional issues. The Constitution does not protect a student or parent’s right for a student to wear a particular type or style of clothing. However a recent 5th Circuit case provided that under some circumstances, “an individual’s choice of attire also may be endowed with sufficient levels of intentional expression to elicit First Amendment shelter.” The U.S. Supreme Court has, even in recent cases, provided First Amendment protection to students who want to make statements with political or symbolic content through their dress. Admittedly, clothing usually does not qualify as “pure speech.” But generally the courts (at all levels)-require the uniform or dress code to be rationally related to reducing actual disruptions and loss of instructional time caused by students’ preoccupation with fashion.

Doe v. Utah State Board of Education (Permanent Injunction) Issues: The case was filed as a class action law suit by parents in several schools and school districts in 1992 who realized that their children were disadvantaged because schools were violating state law and the Utah constitution as they charged fees for elementary programs and routinely ignored the fee-waiver status of students at all grade levels. The Temporary Injunction was made permanent by Judge John Rokich in 1994. The Injunction and discussion of the fee issues predates the changes in the Utah Code about school uniforms. However, the Injunction does address the issue of “Uniforms for physical education and Other School Activities” on page 43: “[A]n elementary or secondary student may be asked to bring shoes or other items of clothing that are commonly found in students’ homes regardless of wealth.

If special requirements are set for color, style, fabric, imprints, etc., which make it less likely that the specific item will be found in students' homes, however, then the costs for those items are fees;" (italics original). The Injunction also affirms that **no** fees may be charged in elementary schools for programs or activities during the regular school day. Clearly, a very prescriptive uniform (e.g. white shirts with peter pan collars and buttons that match the shirt; skirts or jumpers of a specific plaid) violates this provision of the Permanent Injunction.

Additional Considerations

The USOE has had some preliminary discussions with State Risk Management, the insurer for many charter schools, to discuss if Risk Management would defend an insured who insists on a school uniform policy in violation of an existing court-ordered Injunction. Risk Management agrees that a situation in which an insured willfully and knowingly violates an Injunction is concerning to Risk Management and presents a strong possibility that the insured may not be covered for enforcement of such a policy.

Conclusions

1. Clearly state law allows schools and school districts to adopt school (or district) uniform policies, consistent with the procedures and requirements of the Utah Code. Uniform policies should reinforce school discipline policies and values and promote greater focus on instruction and less on student/family wealth and competition.
2. The state law *and* the First Amendment to the Constitution *require* a good faith opt-out opportunity for students for "extenuating circumstances" and religious or right-of conscience concerns. (This parental right is reinforced in 53A-13-101.1 and R277-105)
3. Prescriptive school uniform policies are fees. Fees may not be charged for elementary school programs offered during the regular school day. (The appropriateness of voluntary contributions from parents is discussed in the Injunction.)

General Guidance

- \$ Clearly, schools can designate colors and styles of clothing, e.g. red shirts and navy pants, no cargo pants; white long-sleeve shirts with collars.
- \$ Does requirement (style, color, combinations) encourage greater school unity, decrease disruption, improve student focus on learning and/or contribute to a more effective

learning climate using examples that you can document?

- \$ Is requirement so prescriptive that the uniform would:
- have to be purchased from one or two specific vendors?
 - be an item that would not be found in most students' homes?
 - be inconsistent with what could be required in a traditional public school?
- \$ Is the policy more prescriptive than is reasonably necessary to accomplish education-related objectives, e.g. are buttons that match the shirt or a peter pan collar on a white shirt/blouse or a blue blazer with *gold* buttons demonstrably different than darker or mismatched buttons, button-down collars and blazer buttons that match the fabric?
- \$ If a school *strongly desires* a patch or insignia on student clothing, the school must provide the insignia for all students-regardless of parents' ability or willingness to pay. By analogy, when traditional public schools desire students to wear matching t-shirts for field trips, the school provides the t-shirts. Otherwise, the required specific t-shirt (or logo) is a fee.